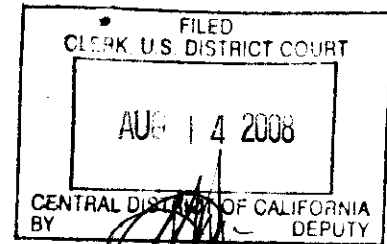


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15
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18 **UNITED STATES DISTRICT COURT**
19 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
20

21 VITAC CORPORATION, a
Pennsylvania corporation,

22 Plaintiff,

23 vs.

24 LINDSAY BEIRIGER, an individual;
25 and DOES 1 through 5, inclusive,

26 Defendants.
27
28

Case No. CV08-04246 CBM(CTx)

**STIPULATION FOR ENTRY OF
PROTECTIVE ORDER; ~~PROPOSED~~
ORDER THEREON**

1 The dispute in this action involves allegations of misappropriation of
2 trade secrets and highly confidential information. During the course of this
3 litigation, highly confidential information will need to be shared through discovery
4 or otherwise between the parties and the Court. So that both parties can continue to
5 protect their confidential business information involving business contacts and
6 descriptions of business methods not generally known to the public, the parties
7 propose this Stipulation.

8
9 This Stipulation governs the covenant of the parties and Defendant's
10 employer CaptionMax. Plaintiff Vitac Corporation on the one hand ("Plaintiff"),
11 and defendant Lindsay Beiriger on the other hand ("Defendant") by and through
12 their respective counsel, hereby stipulate and agree that any documents, information,
13 testimony or transcripts ("Material") deemed by any Party or by any person or entity
14 that is not a party to this action ("Third-Party") to be confidential, proprietary, trade
15 secret and/or subject to a right of privacy ("Confidential Information"), shall be
16 designated and protected according to the following terms and conditions:

17
18 **A. DESIGNATING PROTECTED MATERIAL**

19
20 Any Party or Third-Party may determine in good faith whether any
21 Material should be designated as "CONFIDENTIAL" or "CONFIDENTIAL-
22 ATTORNEYS' EYES ONLY" ("Designating Party"). However, such good faith
23 belief must be based on the fact that such information has not been made public and
24 the Designating Party must have a good faith belief that if such information is
25 disclosed it will have the effect of causing harm to a Party's competitive position or
26 otherwise impinge upon a party's right to privacy. Parties and Third-Parties shall
27 also have the right to designate as "CONFIDENTIAL" or "CONFIDENTIAL-
28

1 ATTORNEYS' EYES ONLY," Material produced, served or provided by other
2 Parties or Third-Parties, in which case the Designator shall notify the other Parties
3 and/or Third-Parties of the Material that should be treated as "CONFIDENTIAL" or
4 "CONFIDENTIAL-ATTORNEYS' EYES ONLY" pursuant to this Stipulated
5 Protective Order. Any Material, or any part thereof, designated as
6 "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY" shall be
7 used only for the preparation and trial of this action, including discovery, pre-trial
8 proceedings, trial, appellate proceedings and petitions for reconsideration and/or
9 review, and shall not be used for any business, commercial or other purpose. Except
10 as otherwise provided in this Stipulated Protective Order, or as otherwise stipulated
11 or ordered, any Material that a Party or Third-Party deems "CONFIDENTIAL" or
12 "CONFIDENTIAL-ATTORNEYS' EYES ONLY" must be clearly so designated.
13 Designation in conformity with this Stipulated Protective Order requires the
14 following:

15
16 1. For Material in documentary form (apart from transcripts of depositions
17 or other pretrial or trial proceedings), the Designating Party producing the
18 documents shall affix the legend "CONFIDENTIAL" or "CONFIDENTIAL-
19 ATTORNEYS' EYES ONLY" at the top or bottom or by watermarking each page of
20 a document that contains Confidential Information. The Designating Party that
21 makes original documents available for inspection need not designate them for
22 protection under this Stipulated Protective Order until after the inspecting Party has
23 indicated which documents it would like copied and produced. During the
24 inspection and before the designation, all of the documents made available for
25 inspection shall be deemed "CONFIDENTIAL-ATTORNEYS' EYES ONLY."
26 After the inspecting Party has identified the documents it wants copied and
27 produced, the Designating Party must determine which documents qualify for
28

1 protection under this Stipulated Protective Order; then, before producing the
2 specified documents, the producing Party must affix the legend "CONFIDENTIAL"
3 or "CONFIDENTIAL-ATTORNEYS' EYES ONLY" to each page of the documents
4 that contain Confidential Information. If, after production, a Party or Third-Party
5 designates as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES
6 ONLY" documents not previously designated, then any Party in possession of such
7 documents shall designate the documents as such in accordance with this Stipulated
8 Protective Order.

9
10 2. For testimony given in deposition or in other pretrial or trial
11 proceedings, the Designating Party shall identify either (a) on the record before the
12 close of the deposition, hearing or other proceeding, or (b) within 20 days after
13 receiving the transcript of such deposition, hearing or other proceeding, all portions
14 of the testimony that it wants to designate as "CONFIDENTIAL" or
15 "CONFIDENTIAL-ATTORNEYS' EYES ONLY." Only those portions of the
16 testimony that are designated for protection during the deposition or other pretrial or
17 trial proceedings, or within the 20 days after receipt of the transcript of such
18 testimony, shall be covered by the provisions of this Stipulated Protective Order.
19 The court reporter shall affix to the top or bottom of each page of a transcript
20 containing Confidential Information the legend "CONFIDENTIAL" or
21 "CONFIDENTIAL-ATTORNEYS' EYES ONLY," as instructed by a Designating
22 Party's instructions.

23
24 3. For any Material produced in other than documentary form and for any
25 other tangible items, the Designating Party producing such Material or tangible item
26 shall affix in a prominent place on the exterior of the container or containers in
27 which the material or item is stored the legend "CONFIDENTIAL" or
28

1 "CONFIDENTIAL-ATTORNEYS' EYES ONLY." If only portions of the
2 information or item warrant protection, the Designating Party, to the extent
3 practicable, shall identify the protected portions. If, after production, a Party or
4 Third-Party designates as "CONFIDENTIAL" or "CONFIDENTIAL-
5 ATTORNEYS' EYES ONLY" any non-documentary Material or tangible item not
6 previously designated, then any Party in possession of such Material or tangible
7 item shall designate it as such in accordance with this Stipulated Protective Order.
8

9 **B. ACCESS TO AND USE OF CONFIDENTIAL INFORMATION**
10

11 1. Subject to paragraph 3 below, all Material designated as
12 "CONFIDENTIAL" may be disclosed only to:
13

- 14 a. Outside counsel for a Party and in-house counsel for plaintiff
15 responsible for overseeing this action, as well as their employees
16 and other persons or entities retained by such counsel to provide
17 litigation-related services;
18
- 19 b. Experts, consultants and other independent contractors retained
20 or employed to consult with, advise or assist counsel for a Party
21 in the preparation or trial of this case, as well as their employees;
22
- 23 c. The Parties to this action and their current directors, officers and
24 employees;
25
26
27
28

1 d. Witnesses who are being prepared by counsel to give testimony
2 at a deposition or at trial, or who are being examined by counsel
3 at a deposition or at trial; and
4

5 e. Personnel employed by the United States District Court for the
6 Central District of California or any appellate court, including,
7 the Ninth Circuit Court of Appeals, appellate court justices, court
8 reporters, clerks and administrative support personnel.
9

10 2. A Designating Party may designate as "CONFIDENTIAL-
11 ATTORNEYS EYES ONLY" any Material that contains private, confidential,
12 proprietary and/or trade secret information that is so sensitive that such Material
13 should *not* be disclosed to the directors, officers or attorney employees of other
14 Parties. Material designated as "CONFIDENTIAL-ATTORNEYS' EYES ONLY"
15 may be disclosed only to outside counsel. Material designated as
16 "CONFIDENTIAL-ATTORNEYS' EYES ONLY" may be disclosed to experts,
17 consultants and other independent contractors retained or employed to consult with,
18 advise or assist outside counsel for a Party in the preparation or trial of this case
19 only by the agreement of counsel or application to this court. If Material designated
20 as "CONFIDENTIAL-ATTORNEY'S EYES ONLY" is relevant to the testimony of
21 a particular employee or witness, it can be shown to that witness only by the
22 agreement of counsel or application to this court.
23

24 3. Parties shall take appropriate measures to ensure that all persons
25 permitted access to Material designated as "CONFIDENTIAL" or
26 "CONFIDENTIAL-ATTORNEYS' EYES ONLY" under paragraph B(1) (b), (c) or
27 (d) of this Stipulated Protective Order have agreed, prior to reviewing any such
28

1 Confidential Information, to be bound by the terms and conditions hereof with
2 respect to the restricted disclosure and use of such Confidential Information. Prior
3 to receiving any Confidential Information, those persons shall sign a copy of the
4 statement attached hereto as Exhibit A, agreeing to be bound by the terms of this
5 Stipulated Protective Order and submitting to the jurisdiction of the United States
6 District Court for the Central District of California to enforce this Stipulated
7 Protective Order. The Party who obtains any such signed statements shall retain
8 possession of the statements and shall provide a copy of the statements at the written
9 request of another Party. However, under no circumstances shall any Party be
10 required to disclose the identity or existence of any expert, consultant or witness
11 until otherwise required to do so by law or order of the United State District Court
12 for the Central District of California.

13
14 **C. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

15
16 If, at any time during the pendency of this action, counsel for any Party
17 wishes to challenge a Designating Party's designation of Material as containing
18 Confidential Information, and to exclude such Material from the provisions of this
19 Stipulated Protective Order, the Party may proceed by petition before the United
20 States District Court for the Central District of California. The Parties shall first
21 meet and confer in a good faith effort to resolve informally any disputes concerning
22 this Stipulated Protective Order before bringing any such petition before the United
23 States District Court for the Central District of California. The burden rests on the
24 Party resisting the confidentiality designation to demonstrate that the
25 "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY"
26 designation is improper.

1 **D. INADVERTENT OR UNAUTHORIZED DISCLOSURE OF**
2 **CONFIDENTIAL INFORMATION**
3

4 Inadvertent production without prior designation of any Confidential or
5 Privileged Information shall be without prejudice to a Designating Party's right to
6 later file a petition seeking to have the Confidential or Privileged Information
7 designated as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES
8 ONLY," or to any other Party's right to argue that production of such Confidential
9 Information constitutes a waiver under applicable law of the right to designate any
10 Confidential Information as "CONFIDENTIAL" or "CONFIDENTIAL-
11 ATTORNEYS' EYES ONLY," or that such material must be returned as privileged.
12

13 **E. MAINTENANCE AND FILING OF CONFIDENTIAL INFORMATION**
14

15 1. All Material designated as "CONFIDENTIAL" or "CONFIDENTIAL-
16 ATTORNEYS' EYES ONLY," shall be kept in secure facilities. A "secure facility"
17 is a place where access is restricted to only to those designated persons set forth in
18 paragraphs B(1)(a) and (b) of this Stipulated Protective Order.
19

20 2. Any information, including, but not limited to, documents,
21 interrogatory responses and depositions designated as containing Confidential
22 Information, where submitted to the Court with a pleading or as evidence, shall be
23 delivered to the Court sealed and not be available for public inspection. Counsel for
24 the respective Parties shall place any documents to be submitted to the Court in an
25 envelope marked "SEALED," affix a copy of this protective order to the documents,
26 and deliver the documents directly to the clerk or secretary of the Judge assigned to
27 hear this matter. Documents submitted under seal shall not become part of the
28

1 Court's file(s) relating to this action, but instead will be kept in a secure location by
2 the Judge assigned to hear the matter, and thereafter returned to counsel who
3 submitted the documents as and when directed by the Court.
4

5 3. Documents or other information designated as containing Confidential
6 Information pursuant to this protective order shall be offered as evidence at trial
7 only under an appropriate order issued by the Court protecting their confidentiality,
8 unless the confidentiality of such information has been removed by agreement of
9 counsel, waiver, or application to the Court.
10

11 4. Nothing in this Stipulation requires the Court to automatically grant a
12 request to file documents labeled "CONFIDENTIAL" or "CONFIDENTIAL
13 ATTORNEYS' EYES ONLY" under seal. In accordance with Local Rule 79-5.1,
14 the proposed filing shall be accompanied by an application to file the papers or
15 portion thereof containing the protected information under seal and the application
16 shall be directed to the judge to whom the papers are directed.
17

18 **F. CONFIDENTIAL INFORMATION SUBPOENAED OR ORDERED**
19 **PRODUCED IN OTHER LITIGATION**
20

21 1. The terms of this Stipulated Protective Order shall apply to all manner
22 and means of discovery, including subpoenas duces tecum.
23

24 2. In the event that a Party is served with a subpoena that seeks to compel
25 the production of Material designated as "CONFIDENTIAL" or "CONFIDENTIAL-
26 ATTORNEYS' EYES ONLY," the Party upon whom the subpoena is served shall
27 give written notice of the subpoena to the Designating Party at least seven (7)
28

1 calendar days before the production date (or, if the subpoena provides less than
2 seven (7) days notice, within one (1) business day after service of the subpoena).
3 The Designating Party may then file a petition or motion to quash the subpoena
4 and/or obtain such other relief as will protect the confidential nature of the
5 documents. If the Designating Party files such a petition before the production date
6 specified in the subpoena, the Party upon whom the subpoena is served shall not
7 produce the requested documents until after the United States District Court for the
8 Central District of California or appropriate court has ruled on the petition or
9 motion.

11 **G. FINAL DISPOSITION**

13 Within thirty (30) days after the final termination of this action, counsel
14 for each Party shall return to the Party or Third-Party who produced it, any and all
15 Material designated as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS'
16 EYES ONLY" and shall destroy all copies, digests or summaries which have been
17 made of, or prepared from, such Confidential Information, and shall provide counsel
18 for the Party or Third-Party who produced such Material (upon request) with a
19 declaration under penalty of perjury attesting to such return and/or destruction. For
20 purposes of this Stipulated Protective Order, the term "final termination" shall refer
21 to the time after any final order or award is entered in this action, with no timely
22 petition for reconsideration or petition for review having been filed, or, if any such
23 petition is filed, after a final decision is rendered by the United States District Court
24 or any appellate court with no further petition or appeal pending or possible.

1 **H. MISCELLANEOUS**

2
3 1. Subject to the Provision of Paragraph F(2), above, nothing in this Stipulated
4 Protective Order shall be construed to relieve any Party from the obligation to timely
5 respond to a discovery request, nor shall this Stipulated Protective Order be construed as a
6 waiver of the right to assert any objection to a discovery request.
7

8 2. This Stipulated Protective Order is intended to regulate the production and
9 dissemination of Confidential Information during the entirety of this action, and thereafter
10 shall remain in full force and effect, unless and until modified, superseded or terminated by
11 written agreement of all Parties or by order of the United States District Court. This
12 Stipulated Protective Order shall become effective as among the Parties when executed by
13 all Parties, with or without the District Court's entry of the order. The United States
14 District Court for the Central District of California shall retain jurisdiction to enforce the
15 provisions of this Stipulated Protective Order and to enter amendments, modifications and
16 additions to this Stipulated Protective Order as the United States District Court for the
17 Central District of California may from time to time deem appropriate upon noticed
18 motion of a Party or upon the United States District Court for the Central District of
19 California's own motion upon notice to the parties.
20

21 3. Counsel for both parties shall make every attempt to redact exhibits for use
22 at trial as opposed to marking such exhibits "CONFIDENTIAL" so as to reduce the burden
23 of sealing the Court during trial.
24

25 4. Nothing in this Stipulation shall be construed as improperly limiting the
26 rights of third parties involved in other actions to conduct discovery or to limit the
27
28

1 subpoena power of another court unless a Court grants a properly noticed motion for
2 protective order in such other proceedings.

3
4 SO STIPULATED:

5
6 Dated: August ___, 2008

DORSEY & WHITNEY, LLP

8
9 By: _____

Gabrielle M. Wirth
Attorneys for Plaintiff
VITAC Corporation

10
11 Dated: August ___, 2008

SHEPPARD MULLIN RICHTER &
HAMPTON, LLP

12
13
14 By: _____

Adam Tullman
Attorneys for Defendant
Lindsay Beiriger

15
16
17 Dated: August ___, 2008

SHEPPARD MULLIN RICHTER &
HAMPTON, LLP

18
19
20 By: _____

Adam Tullman
Attorneys for CaptionMax

21
22 **ORDER**

23 IT IS SO ORDERED.

24 Dated: 8/14/08

25 By:  _____
Judge